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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 40

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CAPITAL TRANSIT COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINION BELOW

The opinion of the specially constituted district court (R. 252) is unreported. The report of the Interstate Commerce Commission (R. 125) is published at 270 I.C.C. 651. Earlier reports dealing with the subject matter involved appear at 256 I.C.C. 769, 258 I.C.C. 559, and 47 M.C.C. 205 (R. 48).

JURISDICTION

The final decree of the three-judge district court was entered on December 8, 1948 (R. 321). The petition for appeal was presented and allowed on

February 3, 1949 (R. 323). The jurisdiction of this Court is invoked under 28 U.S.C. 1253 and 2101(b). Probable jurisdiction was noted on April 18, 1949 (R. 1276).

QUESTIONS PRESENTED

1. Whether the Interstate Commerce Commission has jurisdiction to prescribe maximum joint fares (and divisions thereof) for the transportation of passengers by Capital Transit Company and connecting Virginia lines between the District of Columbia and certain nearby points in Virginia (where various military and naval installations are located), such fares being an increase in the fares heretofore prescribed by the Commission for such transportation and sustained by this Court's decision of May 28, 1945 (*United States* v. *Capital Transit Co.*, 325 U. S. 357).

2. Whether the record affords a sufficient basis upon which the district court, or this Court, could properly consider and decide the issue of confiscation.

STATUTE INVOLVED

The pertinent provisions of the Motor Carrier Act, as amended, are set out in the Appendix, *infra*, pp. 36-45.

STATEMENT

The present proceeding is a sequel to *United States* v. *Capital Transit Co.*, 325 U. S. 357, in which this Court sustained the validity in all respects of an order of the Interstate Commerce Commission fixing maximum fares for the transportation of

passengers by bus between points in the District of Columbia and nearby points in Virginia, where certain military and naval offices and installations (including the Pentagon, the Navy Arlington Annex, the Air Force Annex at Gravelly Point, and the Washington National Airport) are located.

The number of passengers traveling daily between the District and these installations in Virginia was, in 1945, over 31,000 (325 U. S. at 358) and, at present, is about 20,000 (R. 134, 136). These installations other than the Pentagon have at all times since their establishment been jointly served by the Capital Transit Company and certain Virginia bus lines[1] with which it connects at points inside the District of Columbia. Prior to April 1, 1947, the Capital Transit Company, under temporary authority from the Interstate Commerce Commission, served the Pentagon directly with its own buses. Since that date, however, Capital Transit has not operated buses in Virginia; its service to the Pentagon has been through connection with a Virginia line at a point inside the District of Columbia, in the same manner as its service to the other installations (R. 2-3, 126-127).

The history of this litigation may be summarized briefly as follows:

On June 12, 1944, after an investigation instituted in 1943 at the request of the Secretaries of

[1] The Alexandria, Barcroft and Washington Transit Company and the Washington, Virginia and Maryland Coach Company, Inc. These carriers are appellants in No. 41.

War and the Navy, the Commission prescribed maximum fares for trips between the District of Columbia and the defense installations in Virginia (R. 1-2, 11-12, 107). These rates applied both to Capital Transit's direct service to the Pentagon and to the service to the other installations operated jointly by Capital Transit and the connecting Virginia lines (R. 11-12). Capital Transit was required to charge no more than its District fares for the Pentagon service (10 cents for a single trip, or three tokens for 25 cents, or a weekly pass for $1.25); on trips utilizing both Capital Transit and a Virginia line, a maximum joint fare was fixed at 12 one-way trips for $1.60, equal to 13⅓ cents per trip (R. 126).

Capital Transit brought suit to set aside this order, and a three-judge district court permanently enjoined enforcement of the order on the grounds that the findings were inadequate and that the Commission acted beyond its jurisdiction. *Capital Transit Co.* v. *United States*, 56 F. Supp. 670. On direct appeal, this Court on May 28, 1945, reversed the district court's decree. It held that the transportation involved came within the Commission's jurisdiction and that its order was valid and supported by the findings and evidence. *United States* v. *Capital Transit Co.*, 325 U. S. 357.

On June 22, 1945, the date when the district court's injunction was dissolved in compliance with the mandate of this Court, the Commission entered an order making effective the maximum fares prescribed in its order of June 12, 1944 (R. 11-12).

Capital Transit thereafter agreed with the Virginia lines that the 13⅓ cent joint fare would be divided by allowing 7.5 cents to the Virginia line and 5.83 cents to Capital Transit (R. 128).[2] In August 1947, two of the Virginia lines filed petitions with the Commission seeking cancellation of the joint fare; these petitions were supported by Capital Transit (R. 128). On October 6, 1947, the Commission denied these petitions and ordered the proceeding reopened for further hearing (R. 128). At the further hearing Capital Transit and the Virginia lines sought cancellation of the joint fare both on jurisdictional grounds and on the ground that the fare was not adequate (R. 129).

The Commission, after considering evidence presented by the interested companies, as well as the Army, the Air Force and the Public Utilities Commission of the District of Columbia, found that the transportation involved was interstate; that continued regulation of the fares in issue was necessary in order to carry out the national transportation policy; and that the existing fares were inadequate to meet the companies' increased expenses (R. 125-140). The Commission concluded that the maximum joint fares of Capital Transit

[2] On June 11, 1947, the Public Utilities Commission of the District of Columbia, acting in response to a petition filed by Capital Transit, entered an order which affirmed its jurisdiction over the transportation of passengers by Capital Transit from one point to another within the District of Columbia, even though the origin or destination of such transportation is outside the District, and which in effect required Capital Transit to accept not less than 10 cents out of the joint fare of 13⅓ cents. This action was taken without notice to the Virginia lines. (R. 127-128.)

and the Virginia lines should be increased to $1.92 for 12 one-way trips, equal to 16 cents per trip. The Commission further found that a reasonable division of the 16-cent joint fare should be 9 cents to the Virginia line and 7 cents to Capital Transit.[3] Accordingly, the Commission on July 7, 1948, entered an order amending in the above respects its previous order of June 22, 1945, which had put into effect the rates sustained by this Court's decision in 325 U.S. 357 (R. 140-142).

On July 26, 1948, Capital Transit filed suit in the District Court of the District of Columbia, attacking both the order of July 7, 1948, and the order of June 22, 1945 (R. 106).[4] On August 4, 1948, a specially-constituted district court, composed of Judges Wilbur K. Miller, Alexander Holtzoff, and Edward A. Tamm, granted a preliminary injunction restraining enforcement of the Commission's orders (R. 171); this injunction

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[3] For the period between June 22, 1947 (from and after which date Capital Transit had claimed its full local rate as its share of the joint rate) and the effective date of its present order, the Commission prescribed the same division that had previously been voluntarily agreed upon by the carriers, viz., 7.5 cents to the Virginia lines and 5.83 cents to the Capital Transit (R. 140).

[4] This action was docketed as No. 3052-48. It was consolidated (R. 85) with No. 2496-47, a suit filed on June 17, 1947, but not brought on for trial by plaintiff until after No. 3052-48 was filed. No. 2496-47 attacked an order of May 9, 1947 (in Docket No. MC-C-891, *Cancellation of Joint Fares Between District of Columbia and Nearby Virginia*, 47 M.C.C. 205) which rejected for filing with the Commission certain tariff notices and schedules which could have resulted in publication of fares violating the order of June 22, 1945. That suit also attacked the order of June 22, 1945.

A further suit (No. 4454-48) was filed on October 28, 1948,

was amended on October 27, 1948 to take into account an increase in the District local fares (R. 251). On November 17, 1948, the day after the case was argued, the three-judge district court held, in an opinion less than 100 words long,[5] "that the Interstate Commerce Commission is without jurisdiction to make the orders here in question," citing only *United States* v. *Yellow Cab Co.*, 332 U. S. 218, and the proviso to Section 216(e) of the Interstate Commerce Act. That section authorizes the Commission to prescribe individual or joint fares (and the division of such fares) for transportation in interstate commerce by motor vehicle common carriers, but provides that "nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever." (Appendix, *infra*, p. 40.) The

attacking an order of September 7, 1948, which rejected for filing an additional tariff notice and a schedule. That suit is still pending, awaiting trial in the court below.

[5] The full text is as follows (R. 252):

"The Court is of the opinion that the Interstate Commerce Commission is without jurisdiction to make the orders here in question, and that the regulatory power in respect to the matter in controversy lies with the Public Utilities Commission for the District of Columbia, *United States* v. *Yellow Cab Co.*, 332 U. S. 218; United States Code, Title 49, Section 316(e) (proviso).

"Judgment for the plaintiff granting permanent injunction against enforcement of the orders of the Interstate Commerce Commission. Counsel will submit proposed findings of fact and conclusions of law, and a proposed form of judgment."

district court's opinion made no mention of this Court's ruling in *United States* v. *Capital Transit Co.*, *supra*.

The district court directed that a permanent injunction issue. To protect the interests of the passengers, the defendants-appellants applied for a stay pending appeal, which was granted (R. 318, 319). On December 9, 1948, the district court issued its findings of fact, conclusions of law and stay order pending appeal (R. 99, 319). The latter order has the effect of continuing the preliminary injunction until the final order of this Court (R. 320).

The interlocutory decree now in effect permits Capital Transit, *pendente lite*, to collect its higher local fares rather than the joint fares prescribed by the Commission. The injunction provides, however, that a passenger who presents a 16-cent joint-line ticket must be transported by Capital Transit if he pays an additional 6 cents, for which he is to be given a receipt entitling him to a refund in that amount if the Commission's order should ultimately be sustained (R. 173, 251-252).

The present situation may be summarized, therefore, as follows: The District local fare is 13 cents cash, or three tokens for 35 cents, or a weekly pass for $1.75. The Virginia local fare is 10 cents cash. The joint-line interstate fare prescribed by the Commission is 16 cents (sold only in tickets of twelve for $1.92). Nevertheless a District resident employed at a defense installation in Virginia

must, under the terms of the interlocutory injunction, pay a total of 22 cents for a one-way trip and 44 cents for a round trip, if he purchases a joint-fare ticket. If, for one reason or another,[6] he does not purchase a joint-fare ticket, he must pay two fares, one to Capital Transit and one to the Virginia line: the total cash fare thus amounts to 23 cents one-way, and 46 cents round-trip. (A slight saving in the Capital Transit fare can be effected by purchasing tokens at the rate of three for 35 cents.) A passenger who does not purchase a joint-fare ticket is given no receipt of any kind, and would not receive any refund in the event that the Commission's order should be sustained.

SUMMARY OF ARGUMENT

I

The transportation here concerned is interstate, and the Commission consequently has jurisdiction, under Section 216 of the Motor Carrier Act, to make the orders in question. This precise issue has been decided by this Court in prior litigation between the same parties. *United States v. Capital Transit Co.*, 325 U. S. 357. That decision creates at least a collateral estoppel by judgment with respect to Capital Transit's service, via the connecting Virginia lines, to all the Virginia installations other than Pentagon. Service to the latter building

[6] The Government is informed that, as a practical matter, very few passengers bother to purchase the joint-fare tickets, which are being sold only by the Virginia lines and not by Capital Transit. (But see the terms of the interlocutory injunction, R. 173.)

was at the date of that decision furnished directly by Capital Transit; it is now served by Capital Transit via a connecting Virginia line in precisely the same manner as the other Virginia installations. As to the Pentagon service, the prior decision of this Court is at least a controlling precedent.

The holding in *United States* v. *Yellow Cab Co.*, 332 U. S. 218, mainly relied upon by the lower court and Capital Transit, is not in point. It did not overrule the *Capital Transit* decision. In fact, dicta in the *Yellow Cab* opinion support the jurisdiction of the Commission in the present proceeding.

Since the journeys are interstate, the proviso to Section 216(e) of the Act, upon which the lower court also relied, has nothing to do with the case, for it in terms relates only to intrastate commerce. The sole purpose of that proviso, as is abundantly made clear by its legislative history, is to preclude the application to motor transportation of the doctrine which allows the Commission to regulate admittedly intrastate rail transportation (*Houston, East and West Texas Ry. Co.* v. *United States*, 234 U. S. 342; 49 U.S.C. 13(4)) "for the purpose of removing discrimination against interstate commerce." The proviso does not purport to narrow the concept of interstate commerce in any way.

II

Alternatively, Capital Transit argues that, assuming the transportation in question to be inter-

state, it is excluded from the Commission's jurisdiction to regulate fares by the provisions of Section 203(b)(8) of the Act, which applies to the "transportation of passengers . . . in interstate . . . commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities . . ." The same section, however, authorizes the Commission to regulate such transportation if it finds such regulation necessary to carry out the national transportation policy declared in the Act—a major aspect of which is the maintenance of a national transportation system "adequate to meet the needs of . . . the national defense."

This Court passed upon this issue also in its 1945 decision, holding that the Commission was justified in finding that regulation of transportation to the defense installations in Virginia was necessary in the interests of the national defense. Capital Transit argues, however, that the end of actual hostilities removes such necessity. But the Commission was plainly justified in finding that the Virginia installations of the Army, Navy and Air Force still play an essential role in the national defense. The needs of the national defense do not necessarily disappear in peacetime; if they did, Congress would not have to appropriate vast sums for such purposes. Congress declared the national transportation policy in time of peace, and plainly intended

the Commission to consider exigencies of defense in time of peace as well as war.

The District of Columbia alone cannot adequately regulate the interstate transportation here involved in such a manner as to carry out the national transportation policy. It is clear, under both the Constitution and the applicable provisions of the District of Columbia Code, that the federal power to regulate interstate commerce must prevail when exercised.

III

Although the district court decided only the issue of the Commission's jurisdiction, appellees may urge that the decree below should be affirmed on the ground that the Commission's order is confiscatory, or, in the alternative, that the cause should be remanded to the district court for consideration of that issue. The difficulty is, however, that the record does not present a sufficient basis on which either this Court or the district court could properly pass upon the issue of confiscation. The general allegations of Capital Transit's complaint do not meet the requirement established by this Court in such cases, that the facts relied upon must be specifically set forth and that it must clearly appear from the allegations that the order complained of will necessarily deny to the utility just compensation. Moreover, the evidence in the record which Capital Transit presented to the Commission would be inadequate to support a judicial determination

that the rate established by the Commission was confiscatory. Capital Transit made no attempt before the Commission to show the actual cost of its segment of the interstate operations in question, contenting itself with the production of estimated average costs based on the total of its interstate and intrastate operations. This Court has refused to sanction the use of such a basis for determining the fairness of interstate rates.

If, as Capital Transit may contend, the issue of confiscation, on which it bore the burden of proof, was inadequately canvassed in the proceedings before the Commission, the correct procedure is to seek reopening of the proceedings before the Commission, not to present new evidence to the district court *de novo*. It would clearly have been improper for the plaintiff to have presented to the district court evidence bearing on confiscation which it had never sought to introduce in proceedings before the Commission. *New York* v. *United States*, 331 U. S. 284, 334-335. In view of the substantial public interest in the prompt enforcement of the Commission's order, establishing fair and reasonable rates for the interstate transportation here concerned, this Court is requested to terminate the litigation by reversing the decree below and dissolving the outstanding injunction *pendente lite*.

ARGUMENT

I

The transportation here concerned is interstate, and the Commission consequently has jurisdiction, under Section 216 of the Motor Carrier Act, to make the orders in question.

Capital Transit argues that the transportation here concerned is "intrastate" within the meaning of the proviso to Section 216(e) of the Motor Carrier Act (Appendix, *infra*, p. 40) and consequently not within the scope of the regulatory powers conferred by the Act. The district court apparently based its holding entirely upon this ground, since it referred to no other provision of the Act.

But this precise issue has been decided by this Court in the Commission's favor in prior litigation between the same parties, in which the transportation in question was held to be interstate. *United States* v. *Capital Transit Co.*, 325 U. S. 357. This Court there said (at p. 363):

> As previously pointed out, twice a day more than 15,000 government employees traveled between the Virginia agencies and their homes via one of the four bus systems. Most of them either went to or from these bus terminals from or to their homes over any of Transit's then available buses or streetcars. Their travel was at certain hours each day, at which special rush hour buses and cars were made available for their carriage. Their interstate journey to work actually began at the time they boarded a Transit bus or streetcar near their home, and

> actually ended when they alighted from the Virginia-going bus at their place of work. On returning from work their interstate journey actually began when they boarded a bus near their work and actually ended when they alighted from a Transit streetcar or bus near their home. True, their interstate trip was broken at the District termini of the Virginia buses, when they stepped from one vehicle to another. But in the commonly accepted sense of the transportation concept, their entire trip was interstate. *Baltimore & Ohio S.W.R. Co.* v. *Settle,* 260 U. S. 166. And the fact that, except as to Transit, they paid a combination of two rates, one for travel wholly within the District, and the other for travel between the District and Virginia, and the journey from their residences to Virginia and back again was taken in two segments, does not mean that the total interstate trip was not on a "through route." *Virginian R. Co.* v. *United States,* 272 U. S. 658, 666-667; *St. Louis S.W.R. Co.* v. *United States,* 245 U. S. 136, 139-140.

The last sentence of this paragraph shows by the words "except as to Transit" that the Court there had in mind and was speaking of the combined service furnished by "Virginia-going" buses of the Virginia lines in conjunction with Capital Transit buses which did not operate into Virginia. Hence the Court's holding with regard to the interstate character of the journey was made with reference to this type of service, where Capital Transit's buses did not leave the confines of the District of

Columbia. The identical situation was thus presented in the prior *Capital Transit* case as in the case at bar.

The decision of this Court in the prior litigation between the same parties seems, therefore, clearly to create as to this issue at least a collateral estoppel by judgment (cf. *Cromwell* v. *County of Sac*, 94 U. S. 351; *Commissioner* v. *Sunnen*, 333 U. S. 591; see Scott, *Collateral Estoppel by Judgment*, (1942) 56 Harv. L. Rev. 1), except perhaps with respect to the Commission's jurisdiction over the trip between the District of Columbia and the Pentagon which, at the time of the prior litigation, was accomplished by an unbroken journey on Capital Transit's own buses and which is now accomplished, like the trip to the other installations concerned, "in two segments." With respect to the Pentagon trip, however, the prior decision of this Court is at least a controlling precedent, for that trip now differs in no material respect from the trips between the District of Columbia and the other defense installations in Virginia, via the connecting Virginia lines, which this Court held to be interstate in its earlier decision.[1]

[1] Capital Transit asserts that there was no consideration or decision as to the effect of the proviso of Section 216(e) in the prior litigation in this Court. Motion to Affirm, p. 22. This assertion ignores the fact that the second of the eight points argued in the brief filed by Capital Transit in that case (No. 663, October Term, 1944, Brief for the Appellee Companies, p. 43 *et seq.*) was devoted to this point and the further fact that this Court explicitly held that the Commission's order "did not, as argued, constitute a regulation of intrastate commerce." 325 U.S. at 365. That this Court did not discuss the point at greater length indicates not that

In support of its holding that the transportation in question was intrastate within the meaning of the proviso to section 216(e) of the Act, the district court cited but one case, *United States* v. *Yellow Cab Co.*, 332 U. S. 218. For the reasons given in the preceding paragraph, that case could be a controlling precedent in the instant case only on the assumption that it overruled the prior *Capital Transit* case—an assumption which is plainly untenable, if only because the *Yellow Cab* opinion cited the *Capital Transit* case in support of the proposition that "interstate journeys are to be measured by 'the commonly accepted sense of the transportation concept.'" 332 U. S. at p. 231. It is equally plain that the decision in the *Yellow Cab* case would not be helpful to appellees, even if the *Capital Transit* case had never been decided. Applying the quoted standard to taxicab rides, in cabs operated by local taxi companies, between homes and railroad stations, the Court said (at pp. 231-232):

> Here we believe that the common understanding is that a traveler intending to make an interstate rail journey begins his interstate movement when he boards the train at the

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the point was given no consideration, but that it was regarded as having been adequately disposed of by the holding that the trips were interstate. Moreover, even if it could be supposed that the Court did not deal with this argument in holding the transportation be interstate, it said (also at p. 365): "Other contentions urged by the carriers have been considered, but need not be discussed, since we are satisfied with the disposition made of them by the I.C.C." It is therefore plain that this Court considered and decided the issue in the prior decision.

> station and that his journey ends when he disembarks at the station in the city of destination. * * * From the standpoints of time and continuity, the taxicab trip may be quite distinct and separate from the interstate journey.

Such reasoning is evidently quite inapplicable to the circumstances of the case at bar where there is a daily and regular flow of large numbers of government employees, utilizing mass transportation facilities, in continuous albeit interrupted journeys between their homes in the District of Columbia and their offices in Virginia. The transportation here concerned is, in fact, as the Commission pointed out in its report,* within the category described in another excerpt from the opinion in the *Yellow Cab* case (332 U. S. at pp. 228-229):

> When persons or goods move from a point of origin in one state to a point of destination in another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character. * * * That portion must be viewed in its relation to the entire journey rather than in isolation. So viewed, it is an integral step in the interstate movement. * * *

From these quotations it is clear that the holding in the *Yellow Cab* case—that the cab trips in question had too "casual and incidental" a relationship

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* 270 I.C.C. 651, 655-6 (R. 130).

to interstate transportation to fall within the reach of the Sherman Antitrust Act—has no applicability here. Moreover, the opinion in the *Yellow Cab* case expressly limited the holding to the peculiar facts of that case. This Court said (332 U. S. at 233):

> All that we hold here is that when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation. And a restraint on or monopoly of that general local service, without more, is not proscribed by the Sherman Act.

Finally, the inappositeness of the *Yellow Cab* case is emphasized by the fact that taxicab service is expressly excluded from the operation of the Interstate Commerce Act by Section 203(b)(2) of the Act (49 U.S.C. 303(b)(2), Appendix, *infra*, p. —). Joint rates and through rates between connecting bus lines are, in contrast, expressly provided for by Sections 216(a) and (e) of the Act (49 U.S.C. 316 (a), (e), Appendix, *infra*, p. 36).

Aside from the conclusive effect of this Court's prior decision in the litigation between the Interstate Commerce Commission and the Capital Transit Company, the legislative history of the proviso to Section 216(e) shows that it was not intended in any manner to affect the Commission's power to regulate segments of interstate journeys which take

place within the bounds of a single state. The only function of the proviso in Section 216(e) is to deny to the Commission, in the case of motor carrier transportation, any authority over purely intrastate transportation which might be asserted on the theory that such power over intrastate commerce was necessary for the effective regulation of interstate commerce. In other words, the proviso of Section 216(e) was incorporated in the Act in order to make plain that the doctrine of *Houston, East and West Texas Ry. Co.* v. *United States*, 234 U.S. 342 (the *Shreveport* case), should not be applied to motor carrier transportation.[9]

Under the principles established in the *Shreveport* case, and the subsequently enacted provisions of Section 13(4) of the Interstate Commerce Act (49 U.S.C. 13(4)),[10] the Interstate Commerce Commission is authorized, under certain conditions, to regulate intrastate rail rates. By the proviso in Section 216(e), Congress precluded the Commission from exercising, with respect to motor carriers, the powers over intrastate rates which the Commission possesses in the case of rail carriers by virtue of the *Shreveport* decision and Section 13(4) of the Act. But the proviso, while preventing the Commission, in the case of motor carriers, from regulating intrastate rates "for the purpose of removing discrimination against interstate commerce or for any other purpose whatever," does not pro-

[9] See H. Rep. No. 1645, 74th Cong., 1st Sess., p. 4.

[10] Section 13(4) has been described as a codification of the rule enunciated in the *Shreveport* case. *North Carolina* v. *United States*, 325 U.S. 507, 513.

hibit or affect in any way the exercise of the Commission's power to regulate interstate rates. The proviso, in its very terms, does not alter or narrow the concept of interstate transportation.

The orders of the Commission which the district court set aside were made pursuant to the Commission's power over interstate rates and in accordance with the provisions of Section 203(b)(8) of the Act. 49 U.S.C. 303(b)(8). (See Point II, *infra*, pp. 22-27.) These orders deal, as the Commission stated in its report, with transportation that "falls within the definition of 'interstate commerce' contained in section 203(a)(10), the regulation of which is committed to our authority by section 202(a) of the act."[11] Such power became applicable to its fullest extent upon removal of the exemption in accordance with Section 203(b)(8) of the Act. 49 U.S.C. 303(b)(8). The orders plainly do not regulate intrastate rates or apply the *Shreveport* doctrine to them.

It should be noted that the prior decision of this Court did not involve a determination with respect to the Commission's power to prescribe divisions of the fare between the respective participating carriers. But where the Commission has regulatory jurisdiction under the Interstate Commerce Act to prescribe rates, it has express authority to prescribe divisions thereof. Section 216(f) (49 U.S.C. 316(f)).[12]

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[11] 270 I.C.C. at 655.

[12] Section 216(f) of the Act (49 U.S.C. 316(f)) empowers the Commission to prescribe "the just, reasonable, and equi-

II

The Commission properly found that the national transportation policy required the application of the Act to the transportation in question.

Section 203 (b) (8) of the Motor Carrier Act excludes from those aspects of the Commission's jurisdiction which are here concerned "the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or betwen continguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities . . ." Other parts of the same section authorize the Commission to apply the Act to these zone activities, however, if it finds that such application is necessary to carry out the national transportation policy declared by Congress (i.e., the maintenance of a national transportation system "adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense"). (These statutory provisions are set out in the Appendix, *infra*, pp. 36-37, 44-45.) Capital Transit may argue in support of the judgment below (although the district court did not pass on the

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table divisions" to be received by the several carriers, and also provides that in cases "where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith."

point) that the Commission could not properly find that the application of its regulatory powers to the transportation here involved was necessary in the interests of the national defense.

But this contention also was rejected in the *Capital Transit* case, in which this Court squarely held that the Commission's findings were justified. 325 U.S. at pp. 361-362. In its Report of July 7, 1948, in the instant proceedings the Commission adhered to its original findings, pointing out that "the national transportation policy contemplates a national transportation system that will, among other things, meet the needs of national defense, and it applies in peacetime as well as in wartime" (270 I.C.C. at p. 657, R. 132).

As above indicated (*supra*, pp. 2-3), the Virginia establishments in question are still operated by the Army, Navy and Air Force and still have several thousand employees who are dependent on the transportation here concerned. The high fares charged for the trip between the District of Columbia and Virginia are still an obstacle to the recruitment of lower bracket employees for work in these national defense installations (R. 823-825, 831). Capital Transit argues, nevertheless, that the end of the shooting war makes the needs of the national defense no longer an appropriate factor for the Commission to consider as an element of national transportation policy (R. 476-478). Congress, however, plainly did not intend to limit the phrase "national defense", as employed in the

national transportation policy, to activities in time of war. That policy was, in fact, declared by Congress in peacetime.

It is self-evident that the needs of the national defense do not automatically disappear in time of peace. National defense is not synonymous with war. Unless and until the Pentagon and the other defense installations in Virginia are demolished, or become devoted entirely to non-defense civil or commercial uses, the transportation requirements of the workers in those establishments can properly be regarded by the Interstate Commerce Commission as related to the needs of the national defense.

Only federal regulation can adequately safeguard the interests of the national defense in this interstate transportation. In its prior opinion, after pointing out that "these were interstate rates for interstate travel which applied almost exclusively to workers engaged in national defense," this Court said that "Neither the District nor Virginia had power adequately to regulate the rates." 325 U. S. at 361-362. The essential conditions remain unchanged: where two local fares must be paid for what is essentially a single journey between home and office, instead of a single reasonable rate for the entire trip, there is a public need for action by a single rate-making authority, viz., the Interstate Commerce Commission, the agency

established by Congress to regulate interstate transportation.[13]

Capital Transit now argues that the orders of the Interstate Commerce Commission were beyond its jurisdiction because of action taken by, or authority conferred upon, the Public Utilities Commission of the District of Columbia. But, for the purposes of the Interstate Commerce Act, the District of Columbia is treated upon the same footing as a "State"[14] Consequently, whatever the powers of the District's Public Utilities Commission might be in the absence of action by the Interstate Commerce Commission, it is plain that the federal power

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[13] As the Commission stated in a prior report (256 I.C.C. at 782):

> This is urban, mass transportation between points in the District and points in Virginia just beyond the District-Virginia line, and is the same in all essential characteristics as the transportation between residential areas of the District and commerrial and Government establishments in the District. That part of the transportation here under consideration is not comparable with the transportation generally necessary in extension of transit service into suburban areas. In the case of the former, the movement is in vehicles loaded to utmost vehicle capacity and for relatively short distances, while the latter is characterized by longer hauls and less utilization of vehicle capacity although, under present conditions, practically all urban and suburban bus lines are heavily loaded during rush hours. It is to be noted that there are no residential areas between the District and the Virginia installations. These installations represent to all intents and purposes an extension of the main business area of Washington. The operations here considered are under favorable conditions. In addition to capacity loads, the movement for the most part is over a new and elaborate road system especially designed and built to accommodate such traffic.

[14] Section 203(a)(8) of the Act (49 U.S.C. 303(a)(8)).

to regulate interstate commerce must prevail when exercised. *Gibbons* v. *Ogden*, 9 Wheat. 1, 210-211.

Indeed, the very provisions of the District of Columbia Code relied upon by Capital Transit [15] to show the Public Utilities Commission's power of regulating transportation "from one point to another within the District of Columbia" go on to declare expressly that such provisions "shall be so applicable and be so construed as to be free from conflict with those provisions of the Constitution of the United States and the laws in pursuance thereof relating to interstate commerce." [16]

For the same reason, there is no merit in the contention that the Commission's orders result in a discrimination against other users of Capital Transit service within the District. That argument is based upon the fact that a passenger making a local trip within the District might be traveling the same distance on Capital Transit's vehicle as another passenger going on to Virginia, but would not be paying the same fare. But this situation is merely one of the inevitable incidents of our federal sys-

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[15] Capital Transit's Motion to Affirm, pp. 14-15.

[16] 37 Stat. 977, D.C. Code 43-122. Transportation "from one point to another" within a state may unquestionably constitute a portion of an interstate movement. To the argument that Capital Transit "can have no knowledge * * * as to the destination of a passenger" going to Virginia (Public Utilities Commission's Motion to Affirm, pp. 11-12), the obvious answer is that special tickets are issued for the interstate journey, and the company knows that passengers presenting such tickets claim the benefit of the interstate rate.

tem of government and of accepted principles of rate making.[17] It frequently happens that interstate rates for transportation embracing a segment within a particular state are higher or lower than the intrastate rates applicable between the same points. Cf. *Texas & Pacific Ry.* v. *Interstate Commerce Commission*, 162 U. S. 197, 217; *B. & O. S. W. R. Co.* v. *Settle*, 280 U. S. 166, 167.

A lawful exertion of the federal government's authority to regulate interstate rates cannot be nullified merely because the resulting rate is not identical in amount with that which local authorities consider appropriate in the case of intrastate operations.

III

The record does not contain a sufficient basis upon which the issue of confiscation could properly be considered and decided.

In addition to the question of jurisdiction heretofore discussed, Capital Transit alleged in its complaint that the orders of the Commission were confiscatory (R. 7-8, 115). The Commission denied

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[17] Transportation rates are not always proportionate to distance. *Minneapolis & St. Louis Railroad Co.* v. *Minnesota*, 186 U.S. 257, 262; *St. Louis Southwestern Ry. Co.* v. *United States*, 245 U.S. 136, 140; *Ayrshire Collieries Corporation* v. *United States*, 335 U.S. 573, 588-593. For that matter, Capital Transit's own rates within the District are not based upon distance. Passengers riding locally do not all pay the same fare proportionate to distance traveled. There is no difference in the fare collected by Capital Transit, whether a District passenger rides several miles or only several city blocks.

the allegation and answered further that, since the allegations of confiscation had not been presented to the Commission and the plaintiff had consequently not exhausted its administrative remedies, the issue of confiscation was not properly before the court (R. 188). The district court, concluding that the Commission lacked jurisdiction, did not reach this question.

If this Court should find the district court to have erred on the jurisdictional question, it is submitted that the decree below should be reversed with directions to dissolve the outstanding injunction restraining enforcement of the Commission's order. Appellees may urge, in support of the judgment below, that the Commission's order was confiscatory and that the district court's decree should be affirmed on that ground. Alternatively, it may be contended that the cause should be remanded to the district court for determination of that issue. In our view, however, the issue of confiscation has no place in the present proceeding. The record, as it now stands, affords an inadequate basis upon which either this Court or the district court could properly pass upon that issue.

There are two fundamental obstacles which stand in appellees' way. First, this Court has repeatedly stated that one who seeks to enjoin a rate order as confiscatory must make detailed, definite and specific allegations of facts clearly showing confiscation. In *Aetna Insurance Co.* v. *Hyde*, 275 U. S.

440, 447, the Court put the rule into language frequently adopted in later decisions:

> . . . Allegations asserting in general language that the findings, order and reduced rates are confiscatory and repugnant to the Fourteenth Amendment are not sufficient. In order to invoke the constitutional protection, the facts relied on to restrain the enforcement of rates prescribed under the sanction of state law must be specifically set forth, and from them it must clearly appear that the rates would necessarily deny to the plaintiff just compensation and deprive it of its property without due process of law.

See also *Louisville & Nash. R. R. Co.* v. *Garrett*, 231 U. S. 298, 314-315. The principle is, of course, equally applicable when a federal rate order is attacked under the Fifth Amendment. *Beaumont, S. L. & W. Ry. Co.* v. *United States*, 282 U. S. 74, 88-89.

The allegations of Capital Transit's complaint clearly do not satisfy this requirement; they amount in substance merely to an assertion that the fares and divisions prescribed were confiscatory because "so low as to prevent plaintiff from receiving sufficient revenues thereunder to cover all of its operating expenses and other costs justly apportionable to its transportation service to which such [fares and divisions] purport to be applicable plus an amount reasonably sufficient in the circum-

stances to constitute just compensation for the use of its property in such service" (R. 115-116).

Secondly, the evidence which Capital Transit Company did present to the Commission, and which was in the record before the court, would clearly be insufficient to support a judicial determination that the order of the Commission was confiscatory. "The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established." *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 53. The evidence presented by Capital Transit related entirely to its average expense per passenger for all of its District operations;[18] no attempt was made to show the actual cost attributable to its segments of the interstate trips with which the Commission was concerned, or whether revenue from such segments did or did not exceed their cost (R. 856-859, 871-878; Exhibits 135, 136, R. 934-935). But this Court has refused to sanction the use of average costs, based on the total of a carrier's interstate and intrastate business, as a basis upon which to determine the fairness of rates prescribed for its interstate transportation of goods or passengers. Thus, in

[18] In any case, the method used by Capital Transit to determine such expense was admittedly based in part on a guess as to the number of revenue passengers carried (R. 871-875).

Beaumont, S. L. & W. Ry. Co. v. *United States, supra*, it was said (282 U. S. at p. 88):

> . . . Returns from total business of a carrier and the cost of handling the traffic covered by the joint rates are not dependent upon the same facts; the relation between them is slight and remote. For aught that appears the carriers having little or no return on their total business may move the traffic in question at low costs and realize a satisfactory percentage of profit on that part of their business.

See also *Northern Pacific Ry. Co.* v. *Dept. of Public Works*, 268 U. S. 39, 43. A carrier which seeks to show confiscation must present facts bearing upon "the entire traffic to which the rate applies." *Northern Pacific Railway* v. *North Dakota*, 236 U. S. 585, 604. The fares fixed here by the Commission related only to interstate transportation, and Capital Transit could not properly show confiscation with respect to such fares merely by presenting evidence as to its over-all costs or the costs of its intrastate operations. That the interstate fares fixed by the Commission were confiscatory could be shown only by facts, and not by speculation, as to the actual costs of the particular interstate transportation involved. Such evidence was not presented to the Commission.

Capital Transit proposed to present to the district court, however, evidence bearing on the question of confiscation which it had not, at any time before or after the Commission's order, attempted

to introduce before that agency.[19] But this Court, in *New York* v. *United States*, 331 U. S. 284, 334-335, has expressly disapproved such a procedure:

> . . . As stated in *Manufacturers R. Co.* v. *United States*, 246 U. S. 457, 489-490, and in *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 53-54, correct practice requires that, where the opportunity exists, all pertinent evidence bearing on the issues tendered the Commission should be submitted to it in the first instance and should not be received by the District Court as though it were conducting a trial *de novo*. The reason is plain enough. These problems of transportation economics are complicated and involved. For example, the determination of transportation costs and their allocation among various types of traffic is not a mere mathematical exercise. Like other problems in cost accounting, it involves the exercise of judgment born of intimate knowledge of the particular activity and the making of adjustments and qualifications

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[19] This was substantially conceded by the plaintiff's counsel during the argument before the district court (R. 267):

> "Mr. Myse: We propose to bring in evidence on the question of confiscation showing what the effect of the Commission's order of July 7 was for the period from June 22, 1947, to August 2, 1948, when, if the order is effective and lawful, we would be receiving only 5.83 cents. *For the first time*, we now have that data. Of course, it was impossible before the Commission because we did not know what fare it was going to prescribe.
>
> "We also wish to follow through on that and bring in evidence showing what the effect of the future will be as a result of the Commission's order. Other than the questions of fact relating to confiscation, I don't think there are any serious factual issues involved. I think the facts are pretty simple." [Emphasis supplied.]

> too subtle for the uninitiated. Moreover, the impact of a particular order on revenues and the ability of the enterprise to thrive under it are matters for judgment on the part of those who know the conditions which create the revenues and the flexibility of managerial controls.

For the reasons stated, it seems clear that the district court, even had it reached the question, could not properly have enjoined the Commission's order upon the ground that it was confiscatory. The proper forum for trying the issue of confiscation was the Interstate Commerce Commission, and the burden of proof there rested on Capital Transit. It had, and still has, the opportunity to adduce specific evidence tending to show that the rates fixed by the Commission are confiscatory. It must sustain the burden of making a record before the Commission upon the basis of which a court can properly review and decide the question of confiscation. If, as Capital Transit may argue, the issue of confiscation was not adequately canvassed before the Commission, its remedy lies with the Commission and not with the courts. Correct practice, as defined by this Court in the cases cited above, forbids a reviewing court to receive evidence bearing on confiscation which was not previously submitted to the Commission.

In view of the considerable public interest in the prompt establishment of fair and reasonable rates for the transportation here concerned, the Govern-

ment respectfully requests this Court to terminate this prolonged litigation by reversing the decree below with directions to dissolve the outstanding injunction *pendente lite*, restraining enforcement of the Commission's order. Cf. *United States* v. *Capital Transit Co.*, 325 U. S. 357, 359. Such disposition would not preclude Capital Transit from instituting further proceedings before the Commission and, in such proceedings, presenting sufficient evidence, as required by the holdings of the Court, to substantiate its assertions as to the minimum compensation required for the operation of its segment of the interstate trips. Remand to the district court for consideration of the confiscation issue could, in our judgment, result only in further delay in making the Commission's order effective. So long as this litigation lasts and an injunction against enforcement of the Commission's order remains in effect, thousands of Government employees must continue to pay 46 cents a day for transportation which the responsible rate-making body has determined to be worth 32 cents. It is submitted that the public interest calls for conclusion of this litigation without unnecessary delay.

CONCLUSION

For the reasons stated, the decree of the district court is erroneous and should be reversed with directions to dissolve the interlocutory injunction which now restrains enforcement of the fares which the Interstate Commerce Commission has determined to be fair and reasonable.

Respectfully submitted.

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SEPTEMBER, 1949.

APPENDIX

The pertinent provisions of the Motor Carrier Act, 1935, c. 498, 49 Stat. 543, as amended, are as follows:

SEC. 202 (a) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

SEC. 203 (a) (10) The term "interstate commerce" means commerce between any place in a State and any place in another State or between places in the same State through another State, whether such commerce moves wholly by motor vehicle or partly by motor vehicle and partly by rail, express, or water.

SEC. 203 (b) Nothing in this part, . . . shall be construed to include . . . (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; . . . nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the national transportation policy declared in this Act, shall the provisions of this part . . . apply to: (8) The transportation of passengers or property in interstate or foreign commerce

wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intrastate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each State having jurisdiction; . . .

SEC. 216 (a) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participat-

ing therein which shall not unduly prefer or prejudice any of such participating carriers.

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

(c) Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, charges, and classifications with other such carriers or with common carriers by railroad and/or express and/or water; and common carriers of passengers by motor vehicle may establish reasonable through routes and joint rates, fares, or charges with common carriers by railroad and/or water. In case of such joint rates, fares, or charges it shall be the duty of the carriers parties thereto to establish just and reasonable regulations and practices in connection therewith, and just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(d) All charges made for any service rendered or to be rendered by any common carrier

by motor vehicle engaged in interstate or foreign commerce in the transportation of passengers or property as aforesaid or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, region, district, territory, or description of traffic, in any respect whatsoever; or to subject any particular person, port, gateway, locality, region, district, territory, or description of traffic to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this subsection shall not be construed to apply to discriminations, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(e) Any person, State board, organization, or body politic may make complaint in writing to the Commission that any such rate, fare, charge, classification, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section or of section 217. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the Commission shall be of the opinion that any individual or joint rate, fare, or charge, demanded, charged, or collected by any common carrier or carriers by

motor vehicle or by any common carrier or carriers by motor vehicle in conjunction with any common carrier or carriers by railroad and/or express, and/or water for transportation in interstate or foreign commerce, or any classification, rule, regulation, or practice whatsoever of such carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum, or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful classification, rule, regulation, or practice thereafter to be made effective and the Commission shall, whenever deemed by it to be necessary or desirable in the public interest, after hearing, upon complaint or upon its own initiative without a complaint, establish through routes and joint rates, fares, charges, regulations, or practices applicable to the transportation of passengers by common carriers by motor vehicle, or the maxima or minima, or maxima and minima, to be charged, and the terms and conditions under which such through routes shall be operated: *Provided, however,* That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

(f) Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation in interstate or foreign commerce of passengers or property by common carriers by motor vehicle or by such carriers in conjunction with common carriers by railroad and/or express, and/or water are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable, and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. The order of the Commission may require the adjustment of divisions between the carriers, in accordance with the order, from the date of filing the complaint or entry of order of investigation or such other date subsequent as the Commission finds justified and, in the case of joint rates prescribed by the Commission, the order as to divisions may be made effective as a part of the original order.

(g) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, charge, or classification for the transportation of passengers or property by a common carrier or carriers by motor vehicle, or by any such carrier or carriers in conjunction with a common carrier or carriers by railroad and/or express, and/or water in interstate or foreign commerce, or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Commission is hereby authorized and empowered upon complaint of any interested party or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such rule, regulation, or practice, and pending such hearing and the decision thereon the Commission, by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, or charge, or such rule, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding instituted after it had become effective.

If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, or charge, or classification, rule, regulation, or practice, shall go into effect at the end of such period: *Provided*, That this paragraph shall not apply to any initial schedule or schedules filed on or before July 31, 1938, by any such carrier in bona fide operation when this section takes effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable.

(h) In any proceeding to determine the justness or reasonableness of any rate, fare, or charge of any such carrier, there shall not be taken into consideration or allowed as evidence or elements of value of the property of such carrier, either good will, earning power, or the certificate under which such carrier is operating; and in applying for and receiving a certificate under this part any such carrier shall be deemed to have agreed to the provisions of this paragraph, on its own behalf and on behalf of all transferees of such certificate.

(i) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by common carriers by motor vehicle, and classifications, regulations, and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent

advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

The Act of Sept. 18, 1940, 54 Stat. 899, amended the Interstate Commerce Act by inserting the following provision entitled "National Transportation Policy":

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water,

highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

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